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March 28, 2001

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MAR 28 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie R. Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentations by
Association for Local Telecommunications Services
CC Docket Nos. 98-63 and 96-262 /

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's rules, the Association for Local Telecommunications Services ("ALTS"), by its attorneys, submits this notice of an oral *ex parte* presentation made in the above-captioned proceedings on March 27, 2001. The *ex parte* presentation was made during a meeting with Dorothy Attwood, Jane Jackson, Jeffrey Dygert, Tamara Preiss, and Jack Zinman. The presentation was made by Jonathan Askin and Teresa Gaugler of ALTS and by Jon Canis and Ross Buntrock of Kelley Drye & Warren LLP.

During the presentation, ALTS urged the Commission to adopt the ALTS GREAT Proposal, which effectively eliminates CLEC access charges over 2.5 cents per minute, while at the same time eliminating the incentive of large IXCs to continue to engage in self-help. In addition, ALTS is providing information, concurrently with this letter, which demonstrates that the CALLS access rates cannot be used as a benchmark for CLEC access rates. Further, the attachments hereto demonstrate that AT&T and Sprint's arguments in favor of forcing CLEC rates to mirror ILEC levels are completely contrary to positions taken by AT&T and Sprint in the Commission's *UNE Remand* proceeding, where they argued that CLECs face significantly higher costs than ILECs due to the ILECs' increased economies of scale and other cost advantages.

Magalie R. Salas
March 28, 2001
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Pursuant to Sections 1.1206(b)(1) and (2), an original and two copies of this *ex parte* notification are provided for inclusion in the public record of each of the above-referenced proceedings (5 copies total). Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ross A. Buntrock". The signature is fluid and cursive, with the first name "Ross" being particularly prominent.

Ross A. Buntrock

cc: Dorothy Attwood
Jane Jackson
Jeffrey Dygert
Jack Zinman
Tamara Preiss
International Transcription Services

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

ALTS POSITION PAPER IN SUPPORT OF GREAT PROPOSAL

CC DOCKET NOs. 96-262, 98-63

March 27, 2001

**Jonathan Askin, ALTS
Teresa Gaugler, ALTS
Jonathan Canis, Kelley Drye & Warren
Ross Buntrock, Kelley Drye & Warren**

ALTS POSITION PAPER IN SUPPORT OF GREAT PROPOSAL

THE PROPOSAL ELIMINATES THE INCENTIVE OF LARGE CARRIERS TO ENGAGE IN ILLEGAL SELF-HELP

- AT&T has ignored the FCC's direct order to pay access charges (in the MGC case) and to refrain from unlawful self help (in a series of decisions)
 - The Commission ordered AT&T to desist from self-help in a July 1999 "Rocket Docket" decision – it was simply ignored
- The lead Plaintiff in the Eastern District case, Advantel (aka Plan B Communications) has declared bankruptcy, and AT&T's unlawful withholding of over \$1 million in access charges played a significant role
- e.spire Communications, another Eastern District plaintiff, has declared bankruptcy; AT&T's withholding of millions of dollars in access charges likely exacerbated e.spire's financial difficulties
- Because the Commission's enforcement process has not been effective in deterring unlawful self-help, AT&T and Sprint have every incentive to game the regulatory process to continue withholding of access charges as long as possible
 - Most recently, AT&T and Sprint convinced the judge in the Eastern District litigation to stay the case for six months, on the basis of their claim that the Commission would imminently take action to resolve all outstanding issues
- Because the GREAT Proposal establishes a negotiated, industry-wide uniform rate ceiling, and reaffirms the Commission's longstanding prohibition of unlawful self-help, it eliminates the ability of large carriers to benefit from regulatory/litigation delay

THE PROPOSAL PREVENTS ABUSE OF THE FILED RATE DOCTRINE

- The GREAT Proposal effectively eliminates CLEC access charges over 2.5¢ (unless rural CLECs make an affirmative cost showing justifying higher rates)
 - This equates to a reduction of 50% in the average CLEC access charges
 - Constitutes a reduction of 80% from the highest current CLEC access charges

THE PROPOSAL IS THE MOST DEREGULATORY OPTION AVAILABLE TO THE COMMISSION AND THE INDUSTRY

1. It achieves reasonable CLEC access charge levels while eliminating the need for cost-based rate regulation of CLECs
2. Because it adopts an industry-wide consensus, it avoids rate prescription, which would not survive appeal
3. Because it adopts an industry-wide consensus, it avoids prolonged appeals that would follow mandatory detariffing ordered outside of an industry consensus
4. It prevents the service disruption, litigation and rate cases that would follow mandatory detariffing

THE PROPOSAL ESTABLISHES RATES THAT ARE REASONABLE AND DEMONSTRABLY BASED ON COST

- Reduces the highest CLEC rates by 80%
- Reduces average CLEC rate by 50%
- Brings CLEC rates below average NECA rate
- Brings CLEC rates well below average non-NECA independent ILEC rate
- Brings CLEC rates well below many RBOC intrastate access rates
- Matches the pre-CALLS access charges for Tier 1 ILECs, which were the last rates that were prescribed by FCC based on cost
 - The currently effective CALLS rates were negotiated by parties, and were not prescribed by the Commission based on cost
- Data and information on the record in the Access Reform proceeding demonstrates that CLECs' costs are higher than Tier 1 ILEC costs, and more closely resemble those of independent ILECs
 - The Commission has already found that CLECs bear costs, such as collocation, that ILECs do not incur
 - The cheapest loops available to CLECs are UNEs, which under the FCC's TELRIC pricing rules, are priced above ILEC costs
 - Because EELs are not generally available, virtually all CLECs are obligated to resell ILEC Special Access services, which are priced 100% above TELRIC
 - Customers are widely dispersed, like those of independent ILECs (even in urban areas)
 - New entrants have lower utilization rates for equipment
 - CLECs have higher levels of traffic sensitive costs than ILECs
 - For example, they do not install line cards in switches until customer demand justifies such investment

THE PROPOSAL IS A DEREGULATORY STEP TOWARD ELIMINATING UNECONOMIC ARBITRAGE IN ALL INTERCARRIER COMPENSATION

- Currently, ILECs are refusing to provision UNEs to CLECs in order to force them to purchase higher-priced ILEC access services
 - According to the FCC's reported data:
 - 43% of CLEC loops are resold ILEC access services
 - 33% of CLEC loops are self-provisioned
 - Only 25% of CLEC loops are UNEs
 - Source: Telephony, *A Question of Strategy*, Feb. 19, 2001, p. 86
 - Why would CLECs resell ILEC loops, at rates 100% or more above UNE rates, if UNEs were available?
 - This is why EELs are virtually unobtainable outside of BellSouth territory
 - This is why the high capacity and dark fiber loops and transport ordered by the Commission in February 2000 are difficult to obtain, if not completely unavailable
 - This is why, in some states, unbundled loop rates are 1,000% higher in rural areas than in urban areas
 - This is why, in some states, CALLS Switched Access charges are cheaper than the UNE-P
- The GREAT Proposal would recognize that the ILEC efforts to delay or deny access to UNEs increase CLEC costs, and justifies recovery of higher access charges

- Would allow the Commission to establish a consistent costing methodology for intercarrier compensation, which could provide basis for prescriptions that would survive appeal
 - To date, the Commission has never identified the costing methodology that carriers (either dominant or competitive) should use in establishing tariffed rates for wholesale or retail services
 - The debate over the appropriate methodology is currently pending before the FCC in a rate case before the Commission
 - AT&T refuses to identify a methodology
 - Sprint proposes TELRIC
 - Absent a record on which it can base a reasoned decision, the Commission cannot prescribe rates

PRESCRIPTION OF RBOC ACCESS RATES FOR CLECs WOULD NOT SURVIVE APPEAL

- The Commission has never identified a costing methodology to be used in determining whether access charges are just and reasonable
 - The Commission used Average Variable Costs to determine a cost floor for predatory pricing analysis, and has found that Ramsey Pricing is not appropriate for setting access rates, but has never identified a methodology for finding rates just and reasonable
- Since adoption of Price Caps, the Commission cannot determine whether ILEC access charges reflect cost, or what those costs are
- The record in CC Docket 96-262, contains overwhelming evidence that CLECs incur costs in excess of ILEC costs
- In its *UNE Order* and *UNE Remand Order*, the Commission has found that CLECs incur costs in excess of ILEC costs

PRESCRIPTION OF RBOC ACCESS RATES FOR CLECs WOULD LEAD TO INTERMINABLE RATE CASES BEFORE FCC

- The Communications Act secures a carrier's right to a full hearing before rates can be prescribed. Any non-voluntary prescription of reduced access charges would be met by CLECs with an attempt to prosecute their rights to justify higher rates under the Act.

MANDATORY DETARIFFING OF CLEC ACCESS CHARGES WOULD NOT SURVIVE APPEAL

- The Commission presumably would detariff only nondominant carriers, while maintaining tariffs – and the protection of the filed rate doctrine – for dominant ILECs. Such action would be subject to appeal on numerous grounds:
 - The Commission would retain tariffs for ILECs, even if they impose access charges well in excess of CLEC rates
 - Mandatory detariffing presumably is being considered by the Commission because it would force down CLEC access charges
 - the very rationale of this approach assumes that CLECs have no market power, and that large IXC's do, otherwise they could not unilaterally force reductions in CLEC access charges
 - to allow dominant carriers the protections of tariffs, while eliminating such protections for carriers that have no market power – and in fact are subject to the market power of large IXC's – is unsupportable as a matter of law and policy
 - The history of the disputes between AT&T/Sprint and CLECs shows that IXC's will use their negotiating leverage to demand the ILEC rate

- a regulatory scheme designed to force CLECs to set rates at the RBOC rate – despite overwhelming evidence that CLEC’s costs are higher – violates the Communications Act and the Fifth Amendment
- As RBOCs continue to obtain 271 relief, a mandatory detariffing scheme would force CLECs to “negotiate” with IXC’s owned by their ILEC competitors. Given the gross disparities in negotiating leverage, such a regulatory scheme is not supportable
- Mandatory CLEC detariffing would also force CLECs that provide long distance service to purchase service out of the ILEC tariff, while eliminating a corresponding obligation of ILEC long distance affiliate. Such asymmetrical treatment could not withstand judicial review

MANDATORY DETARIFFING OF CLEC ACCESS CHARGES WOULD RESULT IN INTERMINABLE BLOCKING COMPLAINTS AND RATE CASES BEFORE FCC

- As the record in CC Docket 96-262 shows, detariffing would result in IXCs and CLECs resorting to traffic blocking as a means of gaining leverage in “negotiations,” or to punish each other in case “negotiations” fail
 - This would lead to massive customer service disruption, and complaints before the Commission, brought by IXCs, CLECs and end users
 - The Commission would still be forced to adjudge the reasonableness of individual CLEC rates through the complaint process
- The comments on traffic blocking recently filed in CC Docket 96-262 show that AT&T and Sprint are virtually alone in seeking approval of call blocking as a means of resolving rate disputes
 - Indeed, in the Eastern District litigation, both AT&T and Sprint admit that they do not support such an outcome; these IXCs are merely posturing for the record of the Commission’s proceeding

ADOPTION OF THE GREAT PROPOSAL WOULD ALLOW THE COMMISSION AND THE INDUSTRY TO ELIMINATE UNFAIR INTERCARRIER PRICING, AND WOULD ALLOW ALL CARRIERS TO OBTAIN SERVICE AT REASONABLE AND NONDISCRIMINATORY RATES

- The Commission has long proposed to establish a rulemaking proceeding that would review and revise rules on intercarrier compensation
- ALTS enthusiastically supports such action, because it will allow the Commission to establish uniform, nondiscriminatory compensation rules that do not favor one segment of the industry
 - Pricing for UNEs, collocation, reciprocal compensation, Special Access, and Switched Access are all interrelated – a piecemeal approach to changing currently effective rules necessarily will advantage some carriers, while disadvantaging others
 - Many factors relating to the pricing of ILEC network access drive up CLEC costs:
 - refusal to provide UNEs in a timely manner
 - unreasonable nonrecurring charges for new UNEs, and for conversion from ILEC access services to UNEs
 - broad disparities in UNE prices from state to state
 - denial of EELs
 - denial of access to competitive transport providers through collocation arrangements in ILEC central offices
 - uncertainty over CLEC ability to collocate cost-efficient multifunction equipment in ILEC central offices
 - All of these ILEC tactics force CLECs to purchase ILEC access services, at rates many times TELRIC, driving up CLEC costs and making it impossible to charge the ILEC rate for access
 - The plenary review of intercarrier compensation now being considered by the Commission would allow all of these matters to be addressed in a uniform, unbiased way, and would ensure reasonable and fair charges for all forms of compensation

ALTS POSITION PAPER IN CC DOCKET NOs. 96-262, 98-63

**ILEC RATES SET THROUGH THE "CALLS" NEGOTIATED SETTLEMENT
CANNOT BE USED AS A BENCHMARK FOR CLEC ACCESS CHARGES**

**Jonathan Askin, ALTS
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**ILEC RATES SET THROUGH THE “CALLS” NEGOTIATED SETTLEMENT
CANNOT BE USED AS A BENCHMARK FOR CLEC ACCESS CHARGES**

- The CALLS rates were established through negotiations between a self-selected group of IXC and CLECs – the rates were never subject to cost scrutiny, and were never determined by the Commission to be cost-based
- The CALLS rules set rates for some ILEC network functions at levels below rates for comparable UNEs
 - A nation-wide survey of Local Switching Switched Access rates and Local Switching UNE rates shows that CALLS rates are lower than UNE rates in 26 states
 - Chart showing Switched Access and UNE Local Switching rates is appended as Attachment A
- The CALLS access rates are an anomaly, well out of the range of access charges set by every other local carrier, and by many Tier 1 ILECs for intrastate access
 - AT&T's ACC Affiliate: 7.7¢ - 9¢
 - Sprint PCS: 4.5¢
 - Sprint/United: up to 5.5¢ (includes minutized PICC)
 - NECA: 3.25¢ - 5.4¢
 - Non-NECA Independents: up to 14¢
 - Tier 1 Intrastate Access:
 - Verizon – NY: 2.2¢ (originating), 1.5¢ (terminating)
 - SBC – TX: 3.7¢ (originating), 4.0¢ (terminating)
 - SNET – CT: 2.5¢ (originating), 0.9¢ (terminating)
 - Chart showing Ameritech, SBC, and SNET rates appended as Attachment B

THE AT&T AND SPRINT ARGUMENTS IN FAVOR OF FORCING CLEC RATES TO ILEC LEVELS ARE BELIED BY THEIR OWN WITNESSES IN OTHER PROCEEDINGS BEFORE THIS COMMISSION

- AT&T and Sprint's arguments that CLECs must be compelled to charge the same access rates as Tier 1 ILECs is a complete reversal from the positions they took in the Commission's *UNE Remand* proceeding (CC Docket No. 96-98)
 - AT&T's Position in UNE Remand proceeding:
 - CLECs' costs are higher than those of the ILEC due to the ILECs' increased economies of scale and a host of other factors (AT&T witnesses Hubbard, Klick and Pitkin);
 - ILECs' scale and scope economies affect both network operations and retail services (AT&T witness Hubbard);
 - CLECs, even those using UNEs, will face "inherent cost disadvantages relative to the incumbent LEC, and they will face higher risks" (AT&T witness Hubbard);
 - CLECs will face higher one-time entry costs (AT&T witness Hubbard);
 - CLECs will face higher marketing costs and legal costs (AT&T witness Hubbard);
 - CLECs will face higher risks, leading to a higher cost of capital than the ILEC (AT&T witness Hubbard).
 - Sprint's Position in UNE Remand proceeding:
 - CLECs have lower fill factors for network equipment, causing higher per-unit costs (Sprint UNE Comments);

- Self-provisioning of a CLEC's own equipment is preferred, even if it is a more costly option than resale or UNEs (Sprint UNE Comments).

**ATTACHMENT A: COMPARISON OF CALLS LOCAL SWITCHING CHARGES WITH UNE
RATES**

COMPARISON OF UNE LOCAL SWITCHING RATES TO FEDERAL ACCESS LOCAL SWITCHING RATES

		UNE	FEDERAL ACCESS
VERIZON - NORTH			
ME	Day	0.006420	0.003894
	Evening	0.007283	
	Night	0.003234	
VT		0.004003	0.003894
NH	Day	0.003233	0.003894
	Evening	0.004285	
	Night	0.001763	
MA	METRO: PEAK	0.004647	0.003894
	OFF PK	0.001872	
	URBAN: PEAK	0.004724	
	OFF PK	0.001872	
	SUB: PEAK	0.004724	
	OFF PK	0.001872	
	RURAL: PEAK:	0.004724	
	OFF PK	0.001872	
RI	Day	0.006420	0.003894
	Evening	0.007283	
	Night	0.003234	
NY	Day	0.003806	0.003894
	Evening	0.001837	
	Night	0.001508	
NJ	ORIG	0.005418	0.002576
	TERM	0.003207	
PA	ORIG	0.001802	0.002576
	TERM	0.001615	
DE	ORIG	0.003634	0.002576
	TERM	0.001927	
MD	ORIG	0.003800	0.002576
	TERM	.0.003800	
VA	ORIG	0.004129	0.002576
	TERM	0.002079	
WV		0.019343	0.002576

BOLD = UNE Exceeds Access

COMPARISON OF UNE LOCAL SWITCHING RATES TO FEDERAL ACCESS LOCAL SWITCHING RATES

		UNE LOCAL	FEDERAL ACCESS
BELLSOUTH			
AL		0.001800	0.00224
FL	Setup	0.017500	0.00224
	Usage	0.005000	
GA		0.0016333	0.00224
KY		0.002562	0.00224
LA		0.002100	0.00224
MS		0.0023771	0.00224
NC		0.0017000	0.00224
SC		0.0019295	0.00224
TN		0.001900	0.00224

BOLD = UNE Exceeds Access

COMPARISON OF UNE LOCAL SWITCHING RATES TO FEDERAL ACCESS LOCAL SWITCHING RATES

		UNE LOCAL	FEDERAL ACCESS
SBC			
AR	Rural	0.002352	0.003564
	Suburban	0.006137	
	Urban	0.004586	
CA	Interoffice Originating		
	Setup	0.005940	0.002770
	Usage	0.001840	
	Interoffice Terminating		
	Setup	0.007000	
	Usage	0.001840	
	Intraoffice		
	Setup	0.013990	
	Usage	0.003620	
CT		0.005560	0.004860
IL		0.000000	0.003569
IN		0.000879	0.003569
KS	Rural	0.002530	0.003564
	Suburban	0.001690	
	Urban	0.001310	
MI		0.000522	0.003569
MO	Urban(St.L)	0.001988	0.003564
	Suburban	0.002391	
	Rural	0.003444	
	Urban(Spgfd)	0.002934	
NV		0.001610	0.002770
OH		0.000842	0.003569
OK	Rural	0.003800	0.003564
	Suburban	0.002516	
	Urban	0.002268	
TX	Level 1	0.0021160	0.003564
	Level 2	0.0011973	
	Level 3	0.0012691	
	Level 4	0.0014244	
WI		0.001319	0.003569

BOLD = UNE Exceeds Access

COMPARISON OF UNE LOCAL SWITCHING RATES TO FEDERAL ACCESS LOCAL SWITCHING RATES

		UNE LOCAL	FEDERAL ACCESS
QWEST			
AZ		0.002800	0.002249
CO		0.002830	0.002249
ID		0.002900	0.002249
IA		0.002130	0.002249
MN		0.0018100	0.002249
MT		0.002900	0.002249
NE		0.004131	0.002249
NM		0.0011083	0.002249
ND		0.002500	0.002249
OR		0.001330	0.002249
SD		0.003469	0.002249
UT	Urban	0.002299	0.002249
	Suburban	0.002664	
	Rural	0.002896	
WA		0.001200	0.002249
WY		0.003753	0.002249

BOLD = UNE Exceeds Access

ATTACHMENT B: LIST OF SELECTED ILEC INTRASTATE ACCESS CHARGES

Report to the 77th Texas Legislature Intrastate Switched Access Charges Public Utility Commission of Texas January 2001

Chart B-2: Intrastate Switched Access Rates (After CALLS)
(Cents per minute of use)

	Originating	Terminating	Total
NY - Verizon	0.021606	0.014948	0.036554
NY - State-wide Average	0.022643	0.016339	0.038982
CA - Pacific Bell	0.014742	0.014742	0.029484
CA - State-wide Average	0.014719	0.010506	0.025225
TX - SWBT	0.023958	0.034385	0.058343
TX - State-wide Average	0.036785	0.040049	0.076834
Ameritech - Illinois	0.004551	0.004551	0.009102
Ameritech - Indiana	0.005680	0.005680	0.011360
Ameritech - Michigan	0.004978	0.004978	0.009956
Ameritech - Ohio	0.006023	0.006023	0.012046
Ameritech - Wisconsin	0.004978	0.004978	0.009956
Pacific Bell - California	0.014742	0.014742	0.029484
Nevada Bell - Nevada	0.013103	0.013103	0.026206
SWBT - Arkansas	0.024103	0.024103	0.048206
SWBT - Kansas	0.020807	0.020132	0.040939
SWBT - Missouri	0.031917	0.038777	0.070694
SWBT - Oklahoma	0.013624	0.010264	0.023888
SWBT - Texas	0.023958	0.034385	0.058343
SNET - Connecticut	0.024629	0.009474	0.034103

ASSUMPTIONS:

INTRASTATE - AR, KS, MO, OK, & TX - Used average unit cost for transport based on 1999 actual billed transport expenses plus 1 month of current dedicated expenses which are then annualized, totaled and then divided by the total local switched minutes (transport + dedicated / total LS MOUs). With the exception to transport, other rates shown are based on each companies current filed tariff as of 10/23/2000.

INTERSTATE & INTRASTATE - Ameritech, CA, & NV rates are for an Long Distance Residence (LDR) call, Transport 10 miles. Methodology used FCC Docket 96-98 suggestion of 100% utilization of DS3 Entrance Facility, 100%utilization of DS1 Interoffice Channel at 9000 minutes per DSO, 80% direct trunked , 20% tandem trunked.

Ameritech - in addition applicable rates assume: LDR type call, 10 mile transport and Zone 1.

Connecticut and New York - Average unit cost calculation based on the 2nd quarter actual billing includes, PCCC and Dedicated Transport.